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Nos. 01-1118, 01-1119

In The
Supreme Court of the United States

JOSEPH SCHEIDLER, *et al.*,

Petitioners,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., *et al.*,

Respondents.

OPERATION RESCUE,

Petitioner,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., *et al.*,

Respondents.

On Writs Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF OF AMERICAN MEDICAL ASSOCIATION, AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS, CALIFORNIA MEDICAL ASSOCIATION, AMERICAN SOCIETY FOR REPRODUCTIVE MEDICINE, AMERICAN COLLEGE OF LEGAL MEDICINE AND ILLINOIS STATE MEDICAL SOCIETY, AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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35 pp

QUESTION ADDRESSED BY *AMICI CURIAE*

Whether the property of medical professionals, including the right to conduct their business free from coercive force and threats, is property for purposes of the Hobbs Act, 18 U.S.C.S. § 1951?

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Benjamin Cardozo, *Paradoxes of Legal Science* 129 (1928) (reprint 2000).....11

Wesley Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 23 Yale L. J. 16 (November 1913).....11

Wesley Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 26 Yale L. J. 710 (June 1917).....11

John Lewis, *A Treatise on the Law of Eminent Domain in the United States* (1888).....11

James Lindgren, *The Elusive Distinction Between Bribery and Extortion: From the Common Law to the Hobbs Act*, 35 UCLA L. Rev. 815 (1988).....22

James Madison, *Property*, VI *The Writings of James Madison* 102 (1792) (G. Hunt ed. 1906).....11

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INTEREST OF *AMICI CURIAE*

Amicus American Medical Association ("AMA") is a private, voluntary, non-profit organization of physicians. Founded in 1847, its purpose is to promote the science and art of medicine and to improve public health. The AMA's 275,000 members include practitioners in all areas of medicine, medical research, and medical education throughout the United States.

Amicus American College of Obstetricians and Gynecologists ("ACOG") is a private, voluntary, non-profit organization of physicians who specialize in obstetric and gynecological care. ACOG is the leading group of professionals providing health care to women. ACOG has over 43,000 members, representing approximately 90 percent of all obstetricians and gynecologists practicing in the United States.

Amicus California Medical Association ("CMA") is a private, voluntary, non-profit organization of physicians dedicated to the health of Californians. Founded in 1856, the CMA, with over 34,000 members, is the largest state medical association in the country.

Amicus American Society for Reproductive Medicine ("ASRM") is a private, voluntary, non-profit organization of physicians and other medical professionals specializing in reproductive issues and practices. The ASRM supports and sponsors educational activities for the lay public and continuing medical education activities for professionals who are engaged in the practice of, and research in, reproductive medicine.

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* Counsel for a party did not author this brief in whole or in part. No person or entity, other than the *amici*, its members, or its counsel made a monetary contribution to the preparation and submission of this brief.

Amicus American College of Legal Medicine ("ALCM") is a private, voluntary, non-profit organization of physicians, attorneys, dentists, health care professionals, administrators, scientists, and others with a sustained interest in medical legal affairs. The ACLM promotes interdisciplinary cooperation of issues involving law and medicine.

Amicus Illinois State Medical Society ("ISMS") is a private, voluntary, non-profit organization of physicians of all practice types. Established in 1840, the ISMS represents the interests of member physicians, advocates for patients and promotes the doctor/patient relationship, the ethical practice of medicine, and the betterment of the public health within the state of Illinois.

Amici support patients' right of access to medical care. They oppose violence and all acts of intimidation directed against physicians and other health care providers and their families. They further oppose violence directed against medical facilities, including abortion clinics and family planning centers, as an infringement of individuals' right of access to the services of such centers.

AMA, ACOG, CMA, ASRM, ACLM and ISMS respectfully submit this brief as *amici curiae* in support of respondents.[1] All parties have consented in advance to the filing of amicus briefs by any and all interested parties in this case. *See* Supreme Court Rule 37.3(a).

[1] The AMA, the CMA, and the ISMS appear herein on their own behalf as corporate entities and as representatives of the Litigation Center of the American Medical Association and the State Medical Societies. The Litigation Center is a coalition of the AMA and the State Medical Societies, intended to present the viewpoint of organized medicine in the courts.

INTRODUCTION

The petitioners in this case are individuals and organizations that systematically employ criminal tactics to hinder or prevent medical practitioners from carrying on their professional work. These illegal activities are illustrative of a larger, disturbing pattern of violence against medical practitioners, medical researchers and medical facilities across the nation. This case involves a frequent target of such violent attacks – clinics that perform abortions or provide reproductive counseling. *Amici* believe that abortion is a matter of personal values and beliefs, and an appropriate topic for vigorous public debate. But criminal attacks on clinics and physicians, which include actual and attempted murders, kidnappings, bombings, arsons and extortion, go far beyond the realm of debate or protected speech. Indeed, there is no question in this case that petitioners engaged in unlawful activity; the only question here is whether that unlawful conduct gives rise to civil liability under the Hobbs Act and the Racketeer Influenced and Corru[illegible]rganizations Act ("RICO").

The threat faced by the medical community is by no means limited to the abortion context. Numerous organizations crusading for such causes as animal rights, environmentalism and opposition to biotechnology regularly plan and execute violent attacks on medical practice and research facilities. In recent years, vigilantes have firebombed medical laboratories and health clinics; they have threatened and injured individual physicians, nurses and researchers; and they have released and injured laboratory animals, destroyed scientific studies, and, in some cases, set research back by years. The record of violence is staggering. For example:

- In January 2002, the Earth Liberation Front ("ELF"), an environmental group, set fire to the construction site of the Microbial and Plant Genomic Research Center at the University of Minnesota. Minneapolis Star Tribune, April 7, 2002.

- On August 21, 2001, ELF claimed credit for vandalizing a cancer research lab in Cold Spring Harbor, New York, which ELF mistakenly believed was engaged in genetic research. *See* National Animal Interest Alliance archive of terrorist acts by animal rights and environmental groups ("NAIA online archive"), http://www.naiaonline.org/body/articles/archives/arterror.html.

- On June 10, 2001, anti-bioengineering protesters attacked the biotechnology building at the University of Idaho in Boise. NAIA online archive.

- On May 21, 2001, ELF activists firebombed the University of Washington's Center for Urban Horticulture in Seattle, gutting offices and laboratories, destroying over 20 years of research, and causing an estimated $5.4 million in damage. *Id.*

In addition, animal rights activists have targeted medical facilities that use animals to conduct research. For example, the Animal Liberation Front ("ALF") claimed responsibility for firebombing a primate research lab in New Mexico in September 2001, causing $1 million in losses to tools, equipment and records. Boston Globe, Dec. 6, 2001. Animal rights activists also attacked the Cornell University Duck laboratory, releasing over 250 ducks that were part of a research study, NAIA online

archive; destroyed a 72-year-old medical research project at the College of Notre Dame, *id.*; sent packages booby-trapped with razor blades to primate research facilities nationwide, *id.*; vandalized an animal facility at Western Washington University, stealing animals and dumping muriatic acid in medical researchers' offices, http://www.fbresearch.org/illegal-body.html; and raided laboratories at the University of Minnesota, releasing animals used in Alzheimer's and cancer research, NAIA online archive, and causing damage estimated at over $2 million, http://www.fbresearch.org/illegal-body.html.

The tragic costs of this criminal conduct include, of course, the pecuniary and personal losses suffered by the immediate victims. In addition, however, these crimes exact a serious toll on the progress of medicine in this country and the consequent well-being of our citizens. To take just one example, federal law requires that certain drugs be tested on animals before human studies can begin. When activists interfere with animal studies by means of unlawful threats and violence, they hinder the development of medicines and treatments that will ameliorate or cure serious medical conditions, bring relief from pain, and save countless lives.

Amici and their members have a vital interest in ensuring that physicians and medical researchers, and the facilities in which they practice medicine and conduct research, receive effective legal protection from the disruptions and injuries that follow from such criminal conduct. This interest encompasses the protection not only of the lives and livelihoods of physicians and researchers, but also of the health and safety of patients and the substantial public interest in the advancement of medical science.

This case demonstrates the enormous challenge faced by this nation, namely, to punish and deter organizations that seek to impose their particular vision of morality on society as a whole by engaging in an orchestrated, interstate campaign of violence against medical practitioners, researchers and facilities. No single solution serves to answer this challenge. While the 1994 Freedom of Access to Clinic Entrances Act ("FACE") helps protect abortion clinics and their patients, it does not begin to address the full range of problems at issue here. For one thing, FACE punishes individual wrongdoers only; it does not reach the leaders who dispatch foot soldiers across state lines or exploit the channels of interstate commerce to wage "war" against reproductive health service providers. *See* Note, *Federal Statutes – Racketeer Influenced and Corrupt Organizations Act – Seventh Circuit Upholds Injunction Against Anti-Abortion Protest Leaders*, 115 Harv. L. Rev. 1745 (2002). Further, FACE is confined to the abortion and reproductive counseling setting, and does not apply to violence against any other type of medical facility. By enjoining the activities of protest leaders bent on achieving their ends through destruction and intimidation, RICO and the Hobbs Act together provide an essential remedy against the violence that threatens both the medical profession and the community it serves.

SUMMARY OF ARGUMENT

The Hobbs Act defines extortion, in pertinent part, as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear." 18 U.S.C.S § 1951(b)(2). Petitioners argue the Hobbs Act applies only to tangible property that

can be physically confiscated, and not to the property at issue here, *i.e.*, the right to carry out a business, practice a profession or realize the benefits of a contract free from threats and violence.

It is well-established, however, that the Hobbs Act protects just such rights, in keeping with its broad purpose and its common law antecedents. As this Court has repeatedly held, a statutory term is generally presumed to have its common law meaning. Petitioners cite no evidence that Congress intended the word "property" in the Hobbs Act to be understood in a narrow sense, at odds with common law, which understands "property" as a "bundle of rights," including intangible rights like the right to conduct a lawful business or to practice a profession free from threats or coercion.

Petitioners' crabbed reading of "property" in the Hobbs Act to include only tangible, physically grasp-able property leads to the insupportable conclusion that a person who takes a scalpel out of a doctor's hand to prevent him or her from continuing an operation is guilty of extortion, while a person who hurls a firebomb or assaults patients to shut down the doctor's business is not. That is not, and cannot be, the law.

ARGUMENT

PETITIONERS' CRIMINAL CONDUCT FALLS UNDER THE HOBBS ACT BECAUSE IT TARGETS THE PROPERTY OF MEDICAL CLINICS AND MEDICAL PRACTITIONERS – NAMELY, THEIR RIGHT TO CONDUCT BUSINESS UNDETERRED BY VIOLENCE AND THREATS OF VIOLENCE.

The Hobbs Act, 18 U.S.C. § 1951, defines extortion as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear." Among other arguments, petitioners claim that the Seventh Circuit erred in holding that the definition of "property" for the purpose of Hobbs Act liability includes "[(1)] the class women's rights to seek medical services from the clinics, [(2)] the clinic doctors' rights to perform their jobs, and [(3)] the clinics' rights to provide medical services and otherwise conduct their businesses." *National Organization for Women, Inc. v. Scheidler*, 267 F.3d 687, 709 (7th Cir. 2001). According to petitioners, the Seventh Circuit's definition is overbroad because the Hobbs Act applies only to tangible property that can be physically confiscated.[2]

Petitioners are wrong – and, as especially relevant to *amici* here, wrong in a way that slights the rights of doctors and their practice groups to pursue their professions and businesses. Doctors perform many services. Among other things, they assess and treat patients for

[2] Although *amici* medical associations focus on the property rights of doctors and clinics, they endorse respondents' arguments regarding the rights of patients. *Amici* also do not address the RICO issue, but similarly endorse respondents' arguments regarding the scope of RICO.

medical conditions during scheduled office visits, provide counseling in disease prevention, offer emergency care to victims of accidents and sudden illness, perform surgery, and prescribe drugs. They also conduct research that enables society to acquire a better understanding of the human organism and the things that threaten it, to determine the factors that trigger disease, and to develop new medicines for treating disease.

Although the Seventh Circuit did not elaborate on the definition of property under the Hobbs Act, its holding that the statute extends to the rights of doctors and clinics to carry on their business is undoubtedly correct. Indeed, it is consistent with the decision of every other Circuit Court of Appeals to consider this issue. It is also consistent with the broad purpose of the Hobbs Act, which, in keeping with a venerable common law tradition, includes the property rights of business owners to conduct their business and professionals to do the work they are licensed to do.

Petitioners do not dispute that gangsters are guilty of extorting property under the Hobbs Act when they assault others and destroy their businesses to get them to stop cooperating with law enforcement. *United States v. Zemek*, 634 F.2d 1159, 1168, 1174 (9th Cir. 1980), *cert. denied*, 450 U.S. 916 (1981) (defendants firebombed taverns and topless dancing establishments to discourage cooperation with law enforcement officials, obtaining control over victims' goodwill and customer revenues). Nor do they dispute that a company seeking to oust its competitor by means of violence is guilty of extorting property under the Hobbs Act. *United States v. Tropiano*, 418 F.2d 1069, 1072-73, 1075 (2d Cir. 1969), *cert. denied*, 397 U.S. 1021 (1970)

(defendant threatened competitor garbage collection company to prevent it from soliciting further business; property extorted was victim's right to conduct his business and solicit customers). If the Hobbs Act protects the property of tavern owners and garbage collection companies from criminals who threaten or attack them or their establishments to gain unlawful advantages, surely it must protect the business practices of doctors and medical researchers (whose work is recognized as essential to the well-being of the community) from those who stoop to crime to carry out their social agenda.

A. American Jurisprudence Traditionally Defines Property To Include Intangible Rights, Such As The Right To Conduct A Business Or To Practice A Profession.

This country was founded on the idea that, as Alexander Hamilton put it, "[o]ne great ob[ject] of Gov[ernment] is personal protection and the security of Property." *The Records of the Federal Convention of 1787* 302 (M. Farrand ed. 1911). While the precise contours of "property" are far from clear, the one thing that unquestionably emerges from over two centuries of jurisprudential commentary is that property extends far beyond the realm of physical objects to include intangible "things of value" as well as a vast array of rights in relation to tangible and intangible things.[3]

[3] *See, e.g.*, Charles Reich, *The New Property*, 73 Yale L. J. 733 (1964); Jeremy Waldron, *The Right to Private Property* (1988).

James Madison wrote that the government's duty to protect property includes a duty to protect its citizens' "free use of their faculties, and free choice of their occupations, which not only constitute their property in the general sense of the word; but are the means of acquiring property strictly so called." James Madison, Property, in VI *The Writings of James Madison* 102 (1792) (G. Hunt ed. 1906). And, long before the writings of Wesley Hohfeld and A. M. Honore popularized the notion that property is a bundle of rights,[4] a legal scholar commented that, "the dullest individual among the people knows and understands that his property in anything is a bundle of rights." John Lewis, A Treatise on the Law of Eminent Domain in the United States § 55, at 43 (1888) (emphasis omitted).

Time and again, this Court has applied these core tenets. For instance, this Court routinely employs the "common idiom [that] describes property as a 'bundle of sticks' – a collection of individual rights which, in certain combinations, constitute property." *United States v. Craft*, 122 S. Ct. 1414, 1420 (2002) (citing B. Cardozo, *Paradoxes of Legal Science* 129 (1928) (reprint 2000) and *Dickman v. Commissioner*, 465 U.S. 330, 336 (1984)); *Phillips v. Washington Legal Found.*, 524 U.S. 156, 169-70 (1998) ("property is more than economic value [citation]; it also consists of 'the group of rights which the so-called owner exercises in his dominion of the physical thing,' such 'as

[4] *See* Wesley Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 23 Yale L. J. 16 (November 1913); idem, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 26 Yale L. J. 710 (June 1917); A. M. Honore, "Ownership," *Oxford Essays in Jurisprudence: A Collective Work*, (ed.) by A. G. Guest (Oxford University Press, 1961).

the right to possess, use and dispose of it' "); *Dolan v. City of Tigard*, 512 U.S. 374, 384 (1994) ("The right to exclude others [is] 'one of the most essential sticks in the bundle of rights that are commonly characterized as property' ") (quoting *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979)).

More to the point, this Court has repeatedly confirmed that this "bundle" or group of rights includes the right to conduct a lawful business. As this Court stated well over a century ago:

> It is undoubtedly the right of every citizen of the United States to follow any lawful calling, business, or profession he may choose. . . . The interest, or, as it is some times termed, the "estate," acquired in them – that is, the right to continue their prosecution – is often of great value to the possessors, and cannot be arbitrarily taken from them, any more than their real or personal property can be thus taken.

Dent v. West Va., 129 U.S. 114, 121-22 (1889); *see Duplex Printing Press Co. v. Deering*, 254 U.S. 443, 465 (1921) (the "business of manufacturing printing presses and disposing of them in commerce is a property right, entitled to protection against unlawful injury or interference"); *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972) (recognizing property right in continued employment, where employee has "a legitimate claim of entitlement to it. . . . [based on] rules or understandings that secure certain benefits and

that support claims of entitlement to those benefits."); *accord*, *Perry v. Sindermann*, 408 U.S. 593, 601-02 (1972).[5]

Also included in the bundle of rights is the right to practice a profession, once that right has vested. One of the ways in which a right to practice a profession vests and becomes a protected property interest is through state licensing laws, *e.g.*, laws regulating medical licenses. *E.g.*, *Schware v. Board of Bar Examiners*, 353 U.S. 232, 238-39 (1957) (holding that a professional's license is a protected property interest); *Hughes v. Board of Architectural Examiners*, 952 P.2d 641, 657-58 (Cal. 1998) ("an individual, having obtained the license required to engage in a particular profession or vocation, has a 'fundamental vested right' to continue in that activity.") (citations omitted).[6] State regulation of doctors creates a property

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[5] The lower federal and state courts have long followed suit. *E.g.*, *Sailors' Union of the Pacific v. Hammond Lumber Co.*, 156 F. 450, 454 (9th Cir. 1907) (owner of a shipping business has a property right in the business beyond the value of the shipping vessels themselves); *Billings Associated Plumbing, Heating and Cooling Contractors v. State Board of Plumbers*, 602 P.2d 597, 600 (Mont. 1979) (right to carry on plumbing business is a property right); *Texarkana v. Brachfield*, 183 S.W.2d 304, 308 (Ark. 1944) (right to operate a licensed hotel); *Osceola v. Blair*, 2 N.W.2d 83, 83-84 (Iowa 1942) (right to conduct door-to-door sales); *Ellis v. Journeyman Barbers' Int'l Union*, 191 N.W. 111, 115 (Iowa 1922) (right to run a barbershop).

[6] The cases holding that physicians enjoy a protected property interest in a license to practice medicine are legion. *E.g.*, *Lowe v. Scott*, 959 F.2d 323, 334-35 (1st Cir. 1992); *Beauchamp v. De Abadia*, 779 F.2d 773, 775 (1st Cir. 1985); *Kudish v. Bradley*, 698 F.2d 59 (1st Cir. 1983); *Watts v. Burkhart*, 854 F.2d 839, 842 (6th Cir. 1988); *Wilkerson v. Johnson*, 699 F.2d 325, 328 (6th Cir. 1983); *Keney v. Derbyshire*, 718 F.2d 352, 354 (10th Cir. 1983); *Pet v. Dep't of Health Servs.*, 638 A.2d 6, 24 (Conn. 1994); *Appeal of Dell*, 668 A.2d 1024, 1031 (N.H. 1995); *Minton v. Board of Med. Examiners*, 881 P.2d 1339, 1354 (Nev. 1994);

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interest whose value is proportionate to the degree of importance placed upon the practice of medicine.

It is worth recalling the words of this Court in a medical licensing case from over a hundred years ago:

> Few professions require more careful preparation by one who seeks to enter it than that of medicine. It has to deal with all those subtle and mysterious influences upon which health and life depend, and requires not only a knowledge of the properties of vegetable and mineral substances, but of the human body in all its complicated parts, and their relation to each other, as well as their influence upon the mind. The physician must be able to detect readily the presence of disease, and prescribe appropriate remedies for its removal. Every one may have occasion to consult him, but comparatively few can judge of the qualifications of learning and skill which he possesses. Reliance must be placed upon the assurance given by his license, issued by an authority competent to judge in that respect, that he possesses the requisite qualifications. Due consideration, therefore, for the protection of society

Lyness v. Commonwealth, State Bd. of Medicine, 605 A.2d 1204, 1207 (Pa. 1992); *Boedy v. Dep't of Professional Regulation*, 463 So. 2d 215, 217 (Fla. 1985); *Hake v. Arkansas State Med. Bd.*, 374 S.W.2d 173, 175 (Ark. 1964); *State ex rel. Sbordy v. Rowlett*, 190 So. 59 (Fla. 1939); *State Bd. of Medical Examiners v. Friedman*, 263 S.W. 75 (Tenn. 1924); *Suckow v. Alderson*, 187 P. 965, 966 (Cal. 1920) (all holding that physicians enjoy a protected property interest in a license to practice medicine); *see Volpicelli v. Jared Sydney Torrance Memorial Hosp.*, 109 Cal.App.3d 242, 249 (1980) (holding hospitals may not terminate a doctor's staff privileges without first affording him or her procedural due process); *accord, Yeargin v. Hamilton Memorial Hospital*, 171 S.E.2d 136, 139 (Ga. 1969), *cert. denied*, 397 U.S. (1970).

> may well induce the state to exclude from practice those who have not such a license, or who are found upon examination not to be fully qualified. The same reasons which control in imposing conditions, upon compliance with which the physician is allowed to practice in the first instance, may call for further conditions as new modes of treating disease are discovered, or a more thorough acquaintance is obtained of the remedial properties of vegetable and mineral substances, or a more accurate knowledge is acquired of the human system and of the agencies by which it is affected.

Dent v. West Va., 129 U.S. at 122-23.

B. In Keeping With Our Jurisprudential Tradition And This Court's Teachings On The Common Law Roots Of Criminal Law, Federal Courts Have Consistently Applied Hobbs Act Protection To Intangible Property, Including The Right To Conduct A Business And To Practice Medicine Free From Coercive Threats And Force.

This Court has repeatedly held that "'a statutory term is generally presumed to have its common-law meaning.'" *Evans v. United States*, 504 U.S. 255, 259-60 (1992) (quoting *Taylor v. United States*, 495 U.S. 575, 592 (1990)). Indeed, it has followed that cardinal rule in Hobbs Act cases. For example, in *Evans*, this Court's most recent Hobbs Act decision, it stated: "'Where Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was

taken and the meaning its use will convey to the judicial mind unless otherwise instructed. In such cases, absence of contrary direction may be taken as satisfaction with widely accepted definitions, not as a departure from them.'" *Id.* (quoting *Morissette v. United States*, 342 U.S. 246, 263 (1952); *see id.* at n.3 ("as Justice Frankfurter advised, 'if a word is obviously transplanted from another legal source, whether the common law or other legislation, it brings the old soil with it.'"); *id.* at 277 ("the language at issue here must be interpreted in light of the familiar principle that absent any indication otherwise, Congress meant its words to be interpreted in light of the common law") (Kennedy, J., concurring). In short, the Hobbs Act's use of the word "property" must be be read in accordance with the traditional common law understanding of property as a bundle of rights that includes intangible property.

Petitioners cite no evidence that Congress intended the word "property" in the Hobbs Act to be understood in a narrow sense, at odds with its common law meaning. In fact, extortion is no different than any of the numerous Title 18 offenses using the term "property" or "thing of value," which courts have regularly applied to offenses involving intangible property. [7]

[7] *E.g., Carpenter v. United States*, 484 U.S. 19, 25 (1987) (confidential business information is "property" for purposes of the mail and wire fraud statutes); *United States v. Girard*, 601 F.2d 69, 71 (2d Cir. 1979) (law enforcement information is a "thing of value" under the stolen property statute, 18 U.S.C.S. § 641); *United States v. Gorman*, 807 F.2d 1299, 1304-05 (6th Cir. 1986) (loans and promises of future employment are "things of value" under the bribery statute, 18 U.S.C.S. § 201); *United States v. Schwartz*, 785 F.2d 673, 679 (9th Cir. 1986) (assistance

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As respondents and the United States explain in their briefs, the New York statutes on which the Hobbs Act was based – and on which petitioners mistakenly place much stock – did not limit or alter the common law meaning of "property." Indeed, courts applying New York's extortion laws relied from the start on the common law meaning of property in applying the laws to the intangible rights of business owners. *E.g., People v. Barondess*, 31 N.E. 240, 241 (N.Y. 1892); *People v. Hughes*, 32 N.E. 1105 (N.Y. 1893); *People v. Weinseimer*, 102 N.Y.S. 579, 614 (App. Div.) ("an injury to one's business is an injury to property"), *aff'd*, 190 N.Y. 537 (1907).

Moreover, it is plain that Congress intended to *broaden* the common law scope of extortion by extending it to cover unlawful acts of coercion by ordinary citizens, and not just public officials, to whom the offense was limited at common law. *Evans*, 504 U.S. at 260; *see id.* at 261 ("Congress . . . unquestionably *expanded* the common-law definition of extortion" when it enacted the Hobbs Act) (original emphasis); *id.* at 263 (purpose of Hobbs Act is "'to protect the right of citizens of this country to market their products without any interference from lawless bandits'") (quoting 91 Cong. Rec. 11910, 11912 (1945)).

Finally, this Court has observed that the Hobbs Act is "broad [in] scope," and "'speaks in broad language, manifesting a purpose to use all the constitutional power Congress has to punish interference with interstate

in arranging a union merger is a "thing of value" under 18 U.S.C.S. § 1954); *United States v. Croft*, 750 F.2d 1354, 1361-62 (7th Cir. 1984) (the labor of a government employee constitutes a "thing of value" under 18 U.S.C.S. § 641).

commerce by extortion, robbery or physical violence. The Act outlaws such interference "in any way or degree."'" *Evans v. United States*, 504 U.S. 255, 264 n.12 (1992) (quoting *Stirone v. United States*, 361 U.S. 212, 215 (1960)); *see United States v. Culbert*, 435 U.S. 371, 380 (1978) (holding that Congress intended the Hobbs Act should fully reach criminal conduct enumerated in the statute).

In keeping with the common law understanding of property and the Hobbs Act's broad purpose, federal courts have uniformly applied Hobbs Act protection to intangible rights such as the right to conduct a lawful business,[8] to make business and financial decisions free from threats or coercion,[9] and to vote in union elections.[10]

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[8] *E.g.*, *United States v. Zemek*, 634 F.2d 1159, 1168, 1174 (9th Cir. 1980) *cert. denied*, 450 U.S. 916 (1981) (defendants committed extortion by assaulting competitors and firebombing their taverns and topless dancing establishments in order to discourage cooperation with law enforcement officials; property obtained was goodwill and customer revenues); *United States v. Nadaline*, 471 F.2d 340, 342-44 (5th Cir.), *cert. denied*, 411 U.S. 951 (1973) (defendant assaulted and threatened competitor to induce him to fire sales representative formerly employed by defendant; property extorted was victim's business accounts and unrealized profits); *United States v. Tropiano*, 418 F.2d 1069, 1072-73, 1075 (2d Cir. 1969) *cert. denied*, 397 U.S. 1021 (1970) (defendant threatened competitor garbage collection company to prevent it from soliciting further business; property extorted was victim's right to conduct his business and solicit customers).

[9] *E.g.*, *United States v. Hoelker*, 765 F.2d 1422, 1424-25 (9th Cir. 1985), *cert. denied*, 475 U.S. 1024 (1986) (defendant threatened victim with physical violence to get him to sign a life insurance policy naming defendant as beneficiary; property extorted was victim's "right to make personal and business decisions about the purchase of life insurance"); *United States v. Santoni*, 585 F.2d 667, 670, 673 (4th Cir. 1978), *cert. denied*, 440 U.S. 910 (1979) (defendant pressured painting company

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It is hardly surprising, then, that, like the Seventh Circuit in this case, federal courts have applied the Hobbs Act to protect the rights of medical professionals to conduct their work free from violence and threats. For example, in *United States v. Arena*, 180 F.3d 380 (2d Cir. 1999), *cert. denied*, 531 U.S. 811 (2000), the Second Circuit held that defendants committed extortion by pouring butyric acid in a medical clinic that provided a variety of reproductive health services, including abortion, for the purpose of closing down the clinic and preventing patients from using the clinic. *Id.* at 385-86, 392-94. The property extorted was "the business of rendering reproductive health care services engaged in by [the clinic] and [the doctor whose offices were targeted]." *Id.* at 392.

Similarly, in *Northeast Women's Center, Inc. v. McMonagle*, 868 F.2d 1342 (3d Cir.), *cert. denied*, 493 U.S. 901 (1989), the Third Circuit held that defendant anti-abortion activists violated the Hobbs Act by harassing a clinic's clients and employees and damaging and destroying medical equipment. *Id.* at 1347, 1349-50. Defendants extorted "the [clinic's] . . . property interest in continuing to provide abortion services"; the clinic employees' "property

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into signing subcontract with cleaning company; property extorted was victim's right "to make a business decision free from outside pressure wrongfully imposed").

[10] *E.g.*, *United States v. Bellomo*, 176 F.3d 580, 592-93 (2d Cir.), *cert. denied*, 528 U.S. 987 (1999) (defendants threatened union members with violence to induce them to vote for defendants' candidate for union office; property extorted was right of union members to democratic participation in union); *accord, United States v. Debs*, 949 F.2d 199, 200-201 (6th Cir. 1991), *cert. denied*, 504 U.S. 975 (1992); *United States v. Local 560*, 780 F.2d 267, 281 (3d Cir. 1985), *cert. denied*, 476 U.S. 1140 (1986).

interest in continuing their employment with the [clinic]"; and the patients' "property interest in entering into a contractual relationship with the [clinic and its staff]." *Id.* at 1350; *see also United States v. Anderson*, 716 F.2d 446 (7th Cir. 1983) (defendant anti-abortion activist violated the Hobbs Act by abducting a doctor and his wife and threatening to kill them unless the doctor promised to shut down his clinic and stop performing abortions).

C. Petitioners' Arguments Are Meritless.

The Scheidler petitioners sidestep the property rights of clinics and doctors by focusing their argument on the rights of women patients. (Scheidler brief at 11-17, 33-34.)[11] They brush off the rights of clinics and doctors with an aside, noting in passing that, "just as with the extortion claims of patients, the jury was not required to find that petitioners had actually 'obtained' [the] interests [of clinics or doctors]." (Scheidler brief at 17.) Later in their brief, the Scheidler petitioners acknowledge that the Hobbs Act protects intangible property that is "considered as a source or element of wealth." (Scheidler petitioners' brief at 33-34, quoting *Town of West Hartford v. Operation Rescue*, 915 F.2d 92, 101-02 (2d Cir. 1990)). Petitioners remark in a footnote, however, that "[i]t is not clear that the clinics' right to offer services . . . would qualify as property even under the broader reach of the mail fraud statute." (Scheidler brief at 34, n.27.) Petitioners do not explain why

[11] *Amici* endorse respondents' argument that petitioners extorted patients' property rights by preventing them from keeping medical appointments or undergoing medical services for which they had expressly contracted.

this is "not clear" – under the very case they cite, *Town of West Hartford v. Operation Rescue*, 915 F.2d 92, and the numerous cases cited in this brief, it is perfectly clear that the Hobbs Act covers such intangible rights, including "the right to solicit business." *Id.* at 101.

Both sets of petitioners argue that Hobbs Act protection must be limited to tangible or intellectual property because only such property can be "*obtained*." (Scheidler brief at 11-12, 14-18, 27-32; Operation Rescue brief at 33-39.) That argument is untenable. Petitioners unquestionably "obtain" the property of their victims by wresting control over their victims' property rights. As this Court has held, "extortion as defined in the [Hobbs Act] in no way depends upon having a direct benefit conferred on the person who obtains the property." *United States v. Green*, 350 U.S. 415, 420 (1956).[12]

Petitioners attempt to strengthen their argument by insisting that property must be understood in a limited sense to distinguish the offense of extortion (which they claim involves only tangible or intellectual property) from

[12] *Accord, United States v. Lewis*, 797 F.2d 358, 364 (7th Cir. 1986) ("To secure a conviction under the Hobbs Act, the prosecution does not have to show that the defendant acted to receive, either directly or indirectly, the proceeds of his extortion or any benefit therefrom. . . . The extortionist, therefore, does not have to intend to receive the funds demanded. Thus, the defendant would have violated § 1951 if, for example, he had simply demanded that [the victim] burn $1 million in cash.") (citations omitted), *cert. denied*, 479 U.S. 1093 (1987); *United States v. Clemente*, 640 F.2d 1069, 1079-80 (2d Cir.) ("whether a Hobbs Act defendant personally receives any benefit from his alleged extortion is largely irrelevant for the purpose of determining guilt under that Act"), *cert. denied*, 454 U.S. 820 (1981). (*See also* respondent's brief; U.S. brief at 21-26.)

the offense of coercion (which they claim protects "liberty" rights). (Scheidler brief at 23-24, 27-32; Operation Rescue brief at 35, 37-39). This argument also fails. As this Court recognized in *Evans*, extortion by private individuals *is a form of coercion*. 504 U.S. at 263 (distinguishing between extortion by official right and "coercive extortion" by private individuals).[13] The overlap between extortion and coercion is reflected in the dictionary meaning:

> *Extort*: to compel or *coerce* . . . by any means serving to overcome one's power of resistance; to gain by wrongful methods; to obtain in an unlawful manner; to exact something wrongfully by threats or putting in fear.

United States v. Valenzeno, 123 F.3d 365, 369 n.4 (3d Cir. 1997) (quoting Black's Law Dictionary (6th ed.)) (emphasis in opinion). It is also reflected in the history of the offense. *See, e.g.*, James Lindgren, *The Elusive Distinction Between Bribery and Extortion: From the Common Law to the Hobbs Act*, 35 UCLA L. Rev. 815, 825 (1988) (cited in *Evans*, 504 U.S. at 261 and *passim*). This Court should reject petitioners' effort to limit the meaning of the word "property" in the Hobbs Act in reliance on an artificial distinction between two related offenses.

A simple illustration reveals the absurdity of petitioners' crabbed reading of "property" in the Hobbs Act to

[13] Indeed, extortion under color of official right coincides with bribery just as extortion by private individuals coincides with coercion. *Id.* at 267. The overlap between these related criminal offenses is inevitable, and, as this Court observed, "it is not a defense to a charge of extortion under color of official right that the defendant could also have been convicted of bribery." *Id.* at 268. No more is it a defense to extortion by force or fear that the defendant could have been convicted of coercion.

include only tangible, physically grasp-able property. If petitioners were right, then a person who took a scalpel out of a doctor's hand to prevent him or her from continuing an operation would be guilty of extortion, while a person who hurled a firebomb or assaulted patients to shut down the doctor's business would not. That cannot be the law. The Hobbs Act was designed to protect the business of citizens from interference by "lawless bandits" seeking to carry out a private agenda. *Evans*, 504 U.S. at 263. It should certainly protect the rights of medical professionals to do their work free from violent and destructive interference by groups who would force them to abandon their research or their patients.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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AMERICAN MEDICAL ASSOCIATION

H-5.989 Freedom of Communication Between Physicians and Patients

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It is the policy of the AMA: (1) to strongly condemn any interference by the government or other third parties that causes a physician to compromise his or her medical judgment as to what information or treatment is in the best interest of the patient;

(2) working with other organizations as appropriate, to vigorously pursue legislative relief from regulations or statutes that prevent physicians from freely discussing with or providing information to patients about medical care and procedures or which interfere with the physician-patient relationship;

(3) To communicate to HHS its continued opposition to any regulation that proposes restrictions on physician-patient communications; and

(4) to inform the American public as to the dangers inherent in regulations or statutes restricting communication between physicians and their patients. (Sub. Res. 213, A-91; Reaffirmed: Sub. Res. 232 I-91, Reaffirmed by Rules & Credentials Cmt., A-96, Reaffirmed by Sub. Res. 133 and BOT Rep. 26, A-97; Reaffirmed by Sub. Res. 203 and 707, A-98. Reaffirmed: Res. 703, A-00)

H-5.990 Policy on Abortion

The issue of support of or opposition to abortion is a matter for members of the AMA to decide individually, based on personal values or beliefs. The AMA will take no action which may be construed as an attempt to alter or influence the personal views of individual physicians regarding abortion procedures. (Res. 158, A-90; Reaffirmed by Sub. Res. 208, 196; Reaffirmed by BOT Rep. 26, A-97)

H-5.993 Right to Privacy in Termination of Pregnancy

The AMA reaffirms existing policy that (1) abortion is a medical procedure and should be performed only by a duly licensed physician in conformance with standards of good medical practice and the laws of the state; and (2) no physician or other professional personnel shall be required to perform an act violative of good medical judgment or personally held moral principles. In these circumstances good medical practice requires only that the physician or other professional withdraw from the case so long as the withdrawal is consistent with good medical practice. The AMA further supports the position that the early termination of pregnancy is a medical matter between the patient and the physician, subject to the physician's clinical judgment, the patient's informed consent, and the availability of appropriate facilities. (Res. 49, I-89; Reaffirmed by Sub. Res. 208, I-96; Reaffirmed by BOT Rep. 26, A-97)

H-5.997 Violence Against Medical Facilities and Health Care Practitioners and Their Families

The AMA supports the right of access to medical care and opposes (1) violence and all acts of intimidation directed against physicians and other health care providers and their families and (2) violence directed against medical facilities, including abortion clinics and family planning centers, as an infringement of the individual's right of access to the services of such centers. (Res. 82-84; Reaffirmed by CLRPD Rep. 3-I-94; Res. 422, A-95; Reaffirmation I-99)